Form UF 250, New York City Police Department

TIME and DATE OF STOPPING	PERIOD OF OBSERVATION PRIOR TO STOPPING	LOCATION	PCT.	POST	KIND OF PUBLIC PLACE

FACTORS WHICH CAUSED OFFICER TO REASONABLY SUSPECT PERSON STOPPED (Include information from third persons and their identity, if known)

CRIME SUSPECTED	How Long was Person Stoppped	REMARKS BY PERSON STOPPED

OFFICER IN UNIFORM	☐ YES ☐ NO	IF NO, HOW IDENTIFIED	☐ SHIELD ☐ I.D. CARD ☐ BOTH	WAS FORCE USED	☐ YES ☐ NO	IF YES, DESCRIBE

WAS PERSON FRISKED	☐ YES ☐ NO	WAS SEARCH INSIDE CLOTHES MADE	☐ YES ☐ NO	IF YES, DESCRIBE WHERE MADE AND BASIS FOR INSIDE SEARCH

Was Weapon Found	☐ YES ☐ NO	IF YES, DESCRIBE	Was Other Contraband Found	☐ YES ☐ NO	IE YES, DESCRIBE

NAME OF PERSON STOPPED (If given) and ADDRESS

DESCRIPTION	SEX	COLOR	AGE	HEIGHT	WEIGHT	HAIR	EYES	BUILD	OTHER (Describe)

IF PERSON STOPPED IS SUBSEQUENTLY ARRESTED, INCLUDE ADDITIONAL FACTORS WHICH LED TO ARREST

CRIME CHARGED	CONTRABAND FOUND IN POST-ARREST SEARCH	COURT IN WHICH CASE PENDING

RANK	SIGNATURE OF REPORTING OFFICER	SHIELD	COMMAND	RANK	SIGNATURE OF SUPERIOR OFFICER	COMMAND

REPORT OF STOPPING BY FORCE OR STOPPING ACCOMPANIED BY FRISK U.F. 250 (7-64)

AMICUS CURIAE BRIEF

No. 70-283

In the Supreme Court of the United States

OCTOBER TERM, 1971

FREDERICK E. ADAMS, WARDEN,
CONNECTICUT STATE PRISON, PETITIONER

v.

ROBERT WILLIAMS, RESPONDENT

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

ERWIN N. GRISWOLD,
Solicitor General,
HENRY E. PETERSEN,
Assistant Attorney General,
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INTEREST OF THE UNITED STATES

The United States has a direct interest in the standards delineating the power of law enforcement officers to detain persons without formal arrest in the course of investigating crime. Police employed by various agencies of the United States patrol the streets of the District of Columbia, and frequently encounter situations similar to that in the present case. See, *e.g.*, *United States* v. *Frye*, 271 A. 2d 788, 791 (D.C. C.A.). Moreover, while federal investigative agents do not exercise the broad powers of local police, they are not

infrequently confronted with situations where effective law enforcement requires a limited stopping of persons for the purpose of obtaining or verifying information. In addition, because investigations by local police officers frequently produce evidence of federal crime, the question whether such evidence was lawfully obtained has obvious consequences for federal law enforcement. The resolution of this case will necessarily affect standards governing the powers of law enforcement officials in carrying out their duties as approved in *Terry v. Ohio*, 392 U.S. 1.

Unlike *Terry* in which an officer had personally observed unusual conduct warranting a brief "stop," this case concerns the power of a law enforcement official to stop a suspect and undertake a limited search for weapons on the basis of information received from another individual. The *per curiam* opinion by the *en banc* majority below (A. 85) leaves in doubt the precise reasons why it found the actions of the officer in this case improper, but Chief Judge Friendly's dissent in the initial panel suggests that, at least with respect to many kinds of crimes, an officer may not engage in an investigative "stop" on the basis of information obtained from another individual unless the information is "well authenticated" (A. 78). In our view, law enforcement officials, and particularly officers on patrol, should be able, under appropriate circumstances, to act upon information brought to their attention by persons who are known to them or who appear trustworthy even though sufficient grounds for an arrest may be lacking.

STATEMENT

In the early morning hours of October 30, 1966, Sgt. John Connolly of the Bridgeport Police Department was on car patrol duty in a high crime area of Bridgeport, Connecticut (A. 89–91). At approximately 2:15 A.M., while he was seated in his car in a parking area adjacent to a service station, a person known to him came up to his car and advised him that an individual sitting in a nearby vehicle was carrying narcotics and also had a gun at his waist (A. 90).

After calling for assistance on his car radio (A. 97), Sgt. Connolly approached the vehicle, tapped on the window and asked the occupant, Robert Williams, who was in the driver's seat, to open the door. The occupant rolled down the window instead. Concerned for his safety in a situation of particular danger to police officers,[1] Sgt. Connolly reached into the car and removed a revolver from the waistband of the occupant's trousers (A. 91). The gun had not been visible to Sgt. Connolly as Williams was seated in the vehicle (A. 91). Connolly then placed Williams under arrest. A search of Williams, following the arrival of other officers, revealed six packs of heroin in a jar which was found in the pocket of his coat. An additional 21 packs of heroin were found in the car along with a machete under the front seat. A second revolver was found in the trunk of the vehicle (A. 91, 97).

[1] One study indicated that 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J. Criminal L.C. & P.S. 93.

During the suppression hearing Sgt. Connolly testified that he had known the informant since 1965.[2] On one occasion she had given him information regarding homosexual activity at the Bridgeport Railroad Station. While no arrest was made as a result of the investigation which followed, Sgt. Connolly was satisfied that the information was accurate. He explained that the individuals apparently engaging in the activity became aware that they were being observed by him and left the railroad station before there was sufficient basis for an arrest (A. 96–97). On the basis of this incident as well as other conversations with the informant, Sgt. Connolly was satisfied that the informant "was a reasonably trustworthy person." (A. 96).

The respondent's motion to suppress the evidence obtained by Sgt. Connolly was denied by the Superior Court for Fairfield County, Connecticut. The respondent was then tried and convicted of carrying a pistol without a permit, possessing narcotic drugs and having a weapon in a motor vehicle operated by him (A. 33).

The conviction was affirmed on appeal by the Supreme Court of Connecticut (157 Conn. 114, 249 A. 2d 245) and certiorari was denied by this Court (395 U.S. 927).

The respondent then filed a petition for a writ of habeas corpus in the United States District Court for the District of Connecticut which alleged that the evi-

[2] Sgt. Connally's testimony of the events following his approach to Williams' vehicle was not disputed by respondent.

dence seized by Sgt. Connolly was improperly admitted at his trial. The petition was denied after a hearing (A. 49).

The denial of the petition was affirmed by the court of appeals. The respondent then moved for a rehearing *en banc* (A. 80). The motion was granted and upon rehearing the order of the district court was reversed (A. 85).

On January 10, 1972, this Court granted the petition of the State of Connecticut for a writ of certiorari to the court of appeals (A. 88).

SUMMARY OF ARGUMENT

In *Terry* v. *Ohio*, 392 U.S. 1, a case in which a police officer acted on the basis of his own personal observation, this Court upheld the right of law enforcement officers briefly to stop persons suspected of criminal behavior for investigative purposes even though the facts upon which the officers' suspicions are based do not constitute probable cause to make an arrest. There is no valid basis in the Fourth Amendment or in common sense for limiting *Terry* to circumstances in which the officer relies on his personal observations.

Police officers on street patrol are frequently approached by persons relating information regarding criminal activity which requires an immediate response short of an arrest. A requirement that police officers personally authenticate the information given or establish the reliability of the person supplying the information before taking some action would

often be tantamount to a direction that no action be taken.

Since individuals who are known to the police officers or who are willing personally to approach them are not likely deliberately to supply false information, police officers should be permitted to act on such information by stopping the suspect briefly for investigative purposes. Allowing police to act upon such information creates no greater risk of fabrication than is present when the justification advanced for a stop is the officer's own observations.

The officer in this case acted upon information given him by someone whom he had good reason to believe was reliable and his actions on the basis of that information should be upheld as reasonable under the Fourth Amendment.

ARGUMENT

A LAW ENFORCEMENT OFFICIAL MAY LAWFULLY INSTITUTE AN INVESTIGATIVE "STOP" EVEN THOUGH HIS ACTION IS PREDICATED UPON INFORMATION OBTAINED FROM OTHERS

This Court, recognizing that the protean nature of street encounters between citizens and police officers defies comprehensive analysis, has concluded that the reasonableness of a brief detention for investigative purposes may only be determined by an evaluation of the facts of the particular case. *Terry* v. *Ohio*, 392 U.S. 1, 13, 15. Whether an officer is justified on the basis of circumstances he has observed in briefly stopping a person for investigative purposes and undertaking a protective search for weapons depends

upon a judicial assessment of whether "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted that intrusion" (392 U.S. at 21).

In *Terry* the personal observations of the law enforcement officer justified the "stopping" and "frisking" of the suspects. While personal observation of the officer certainly supplies one reasonable basis for a brief stop for investigative purposes, it would be unrealistic to limit a law enforcement officer's response to such situations alone, short of a formal arrest.

Police officers patrolling city streets frequently have their attention called to possible criminal activity which they have not themselves observed. A police officer is approached by a local businessman who relates his observation of an individual acting suspiciously in his store;[3] a taxi driver says that he observed a man walking down the street tuck a gun under his waist;[4] a woman claiming to have been the victim of a robbery gives the police a description of the individual who, she claims, took her purse.[5] In each of these cases an officer should be able to recognize it as his duty to do something more than simply shrug his shoulders and walk away. It can hardly be appropriate for him to say that he can do nothing because there is no probable cause to arrest the suspect.

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[3] *People* v. *Hudson*, 27 N.Y. 2d 911, 265 N.E. 2d 925.

[4] *Gaskins* v. *United States*, 262 A. 2d 810 (C.A. D.C.)

[5] *Daniels* v. *United States*, 393 F. 2d 359 (C.A. D.C.)

Most persons willing to approach police officers will not deliberately supply them with false information, and in the realm of these on-the-spot investigations, a law enforcement response must occur immediately or not at all. There is typically no time for the officer to "authenticate" the information given or to take meaningful measures to assure himself of the reliability of someone not previously known to him. Frequently, an officer will not have time to conduct even a brief interview of the person.

Given these facts as well as the limited scope of the intrusion involved in an investigative "stop" and "frisk," we think the court of appeals was mistaken in suggesting that the information provided must be authenticated before an officer can take action predicated upon it.[6] Such a standard may well be necessary where the police officer seeks to take an individual into custody to answer for a crime and conduct a full blown search. *Spinelli* v. *United States*, 393 U.S. 410; *Draper* v. *United States*, 358 U.S. 307. But where a police officer seeks only to stop an individual briefly on the street to investigate activity which he has some ground to regard as suspicious, or conduct a very limited self-protective search for weapons, a lesser quantum of evidence will suffice to justify the

[6] Chief Judge Friendly suggested in his dissenting panel opinion that in all cases, except those involving violent crimes, an investigative "stop" would be justified only where "observation by the officer himself or well authenticated information shows 'that criminal activity may be afoot'" (A. 78). The opinion is unclear as to whether information from a previously reliable informant may suffice or whether independent corroboration is always necessary.

intrusion. As this Court observed in *Terry*, "reliance on cases which have worked out standards of reasonableness with regard to 'seizures' constituting arrests and searches incident thereto is thus misplaced. It assumes that the interests sought to be vindicated and the invasions of personal security may be equated in the two cases, and thereby ignores a vital aspect of the analysis of the reasonableness of particular types of conduct under the Fourth Amendment" (392 U.S. at 27).

A number of cases have confirmed the authority of police briefly to stop a suspect for investigative purposes where the police officer is acting solely on information obtained from others whom he has no reason to distrust. In *Gaskins* v. *United States*, 262 A. 2d 810, 811 (C.A. D.C.), in which a police officer was stopped by a taxi driver who told him that he had just seen "a guy up the street tuck a gun inside his belt," the District of Columbia Court of Appeals held that the police officer was justified in stopping and frisking the suspect. The court said: "It is clear that [the] Officer * * * was entitled to rely upon the information imparted to him by the cabdriver, *an eyewitness to the crime*, '[w]ho it [seemed] reasonable to believe [was] telling the truth'" (262 A. 2d at 811; emphasis in original).

In *Daniels* v. *United States*, 393 F. 2d 359, the United States Court of Appeals for the District of Columbia Circuit in a *per curiam* opinion (Bazelon, Wright and Leventhal, J. J.), upheld a police officer's stopping of a suspect based upon a description provided by

a woman who claimed to have been the victim of a robbery. The court observed that the action was justified by information which it was reasonable to believe was truthful.

In *In re Boykin,* 39 Ill. 2d 617, 237 N.E. 2d 460, the police were advised by the principal of a school that he had received an anonymous tip that one of the students at the school was carrying a weapon. The Supreme Court of Illinois sustained the action of the police in calling the suspected student from class and searching him for the weapon. Justice Schaefer, writing for the court, noted "the complete absence of any possible element of gain to the * * * informant from furnishing false information" to the principal, and the necessity for an immediate police response under the circumstances of the case (39 Ill. 2d at 619, 237 N.E. 2d at 461–462). See also *Gaines* v. *Craven,* 448 F. 2d 1236 (C.A. 9); *People* v. *Hudson,* 27 N.Y. 2d 911, 315 N.E. 2d 925; *People* v. *Arthurs,* 24 N.Y. 2d 688, 249 N.E. 2d 462; *People* v. *Woods,* 6 Cal. App. 3d 832; *State* v. *Gordy,* 52 Hawaii 497, 479 P. 2d 800.

Common to these cases, as well as the instant case, is police action based upon otherwise uncorroborated information from sources which the police officer had no reason to distrust and in which his only alternative to stopping the individual for brief investigative purposes was to take no action at all. Indeed, since the officer in the instant case did have some prior basis for believing the informant to be reliable, his justifi-

cation for making the investigative stop was actually more substantial than that in most of these cases.

We recognize that when an officer acts on the basis of information received from another, the observations of the individual providing the information will normally not be available for judicial scrutiny. Thus, the risk that information may derive from "a volatile or inventive imagination" (*Terry*, 392 U.S. at 28) is present. But this risk is much more serious when law enforcement officials respond to tips from anonymous sources[1] than when the officer personally talks with the citizen who provides information. When the officer confronts an individual, he can exercise some judgment as to whether the information is likely to be accurate, and, as we have indicated earlier, most persons, particularly those known to the police officer, will not deliberately supply false information in a face-to-face encounter with the officer.

A different kind of risk, and one that was of particular concern to Chief Judge Friendly (A. 77), is that an officer will fabricate an informant's tip as a means of justifying a seizure, pursuant to a protective "frisk," which in reality is predicated solely upon the officer's "hunch." But the possibility of fabrication is

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[1] Where the tip is from an "anonymous" source, perhaps additional corroboration may be required except in exigent circumstances. See, *e.g.*, *Ballou* v. *Massachusetts*, 403 F. 2d 982, 986 (C.A. 1), certiorari denied, 394 U.S. 909; *People* v. *Taggart*, 20 N.Y. 2d 335, 229 N.E. 2d 581. Compare, however, anonymous phone calls that there is a bomb on an airplane, and the current response of officers responsible for air safety in dealing with the risks involved.

equally present in cases involving the police officer's personal observations. Any standard governing police conduct, however strict, must necessarily rely to some extent on the good faith of law enforcement officials. *Ballou* v. *Massachusetts*, 403 F. 2d 982 (C.A. 1), certiorari denied, 394 U.S. 909. In the present case, for example, if the officer had no respect for truth, a much more convenient story would have been that as he walked over to the car he observed the gun protruding from respondent's waist.[5]

Moreover, there are practical ways to minimize the risk of fabrication without forbidding action on the basis of unauthenticated information from third persons. The trial judge need not take the word of the police officer that an unnamed informant existed. The judge can conduct an *in camera* hearing to determine the name of the informant and otherwise satisfy himself of the informant's existence in cases in which there is any reason to suspect fabrication. See, *e.g.*, *United States* v. *Winters*, 420 F. 2d 523, 524 (C. A. 3); *United States* v. *López*, 328 F. Supp. 1077, 1091 (E.D.N.Y.); Revised Proposed Rules of Evidence for

[5] Chief Judge Friendly's passing doubts as to whether an informant really existed in this case (A. 72 n. 4, 77 n. 8) are not well founded. Sgt. Connolly's testimony about the informant at trial (A. 95–101) does not have the ring of fabrication, and the stricken question of defense counsel whether the informant was named Jane Cooper suggests an absence of doubt as to the informant's reality. Sgt. Connolly's failure to mention the informant at the original suppression hearing is understandable in light of the questions put to him by the prosecutor at that hearing (Tr. 12–13).

United States District Courts and Magistrates, Rule 510(c)(3) (March, 1971).[*]

In cases involving citizen informants, the police should be required "to make every reasonable effort commensurate with the circumstances to obtain and record the identity of their informants in these moving street scenes," since that will enable the police "to locate and identify later the person who gave the information, and thereby go far to remove from subsequent prosecutions the troublesome factors of the unknown and unidentified and uncorroborated informant." *United States* v. *Frye*, 271 A. 2d 788, 791 (D.C. C.A.). These procedures can provide far greater corroboration of the officer's testimony in cases in which he acted upon the information of others than in those cases in which he claims to have acted on the basis of his own observations.

In his opinion, Chief Judge Friendly advanced the suggestion that perhaps *Terry* should not be extended to crimes like the possession of narcotics,

[*] Rule 510(c)(3) provides as follows:

"If information from an informer is relied upon to establish the legality of the means by which evidence was obtained and the judge is not satisfied that the information was received from an informer reasonably believed to be reliable, he may require the identity of the informer to be disclosed. The judge may permit the disclosure to be made *in camera* or make any other order which justice requires. All counsel shall be permitted to be present at every stage at which any counsel is permitted to be present. If disclosure of the identity of the informer is made *in camera*, the record thereof shall be sealed and preserved to be made available to the appellate court in the event of an appeal."

since it affords the police an excuse to look for narcotics under the guise of a protective search for weapons. "There is too much danger that, instead of the stop being the object and the protective frisk an incident thereto, the reverse will be true." (A. 76; see also La Fave, "*Street Encounters*" *and The Constitution: Terry, Sibron, Peters and Beyond*, 67 Mich. L. Rev. 40, at 66 (1968)).

This argument, we believe, ignores the limitations placed on the police officer's right to search for weapons. Both in *Terry* and *Sibron* v. *New York*, 392 U.S. 40, this Court emphasized that circumstances which give rise to the right to stop for investigative purposes do not automatically justify a protective search for weapons. Such a search is permitted only where the police officer is "justified in believing" that the suspect may be armed. In *Terry* the fact the defendant was suspected of being involved in a crime which might reasonably entail the use of weapons was sufficient to justify the police officer's suspicion that the suspect was armed where nothing in the initial encounter served to dispel that fear. On the other hand, in *Sibron*, a case in which the officer suspected the defendant of being engaged in the selling of narcotics, there were no facts found to justify a protective search for weapons although the Court indicated the

initial "stop" may have been justified (*Sibron*, 392 U.S. at 63). Moreover, the restricted nature of the frisk itself tends to limit the extent to which the procedure may be abused. A police officer can only remove objects feeling like weapons. Narcotics are not typically packaged in a manner that would make the assertion that they felt like a weapon plausible. See, *e.g.*, *People* v. *Armenta*, 268 Cal. App. 2d 248, 73 Cal. Rptr. 819.

In sum, we believe it is consistent with the standard of reasonableness embodied in the Fourth Amendment to recognize a power in law enforcement officers to engage in a brief investigative detention and, if necessary, a search for weapons, on the basis of information supplied by persons known to them or by persons who appear to be responsible citizens. In the present case, the police officer acted on the basis of specific information he had obtained from an individual previously known to him and whom he had no reason to disbelieve. His action in approaching the vehicle was consistent with his duties as a police officer. Since a "frisk" of the suspect was impossible under the circumstances, his conduct in reaching for the weapon was a limited act necessary to protect himself in a situation which poses a particular hazard for police officers.[10]

[10] A striking illustration of the hazards which police officers face in approaching automobiles may be found in *United States* v. *Kearney*, 420 F. 2d 170 (C.A. D.C.).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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